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To: Microsoft ATR
Date: 1/23/02 10:17pm
Subject: Microsoft Settlement

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I write to provide you with some commentary as permitted under the Tunney Act on the proposed Microsoft settlement. I will keep it short.

The proposed settlement is totally unacceptable.

Microsoft has been found guilty of operating an illegal monopoly. This has been upheld upon appeal. And yet, the proposed settlement does remarkably little to impact the way Microsoft does business. And it does even less (zero) in assessing penalties for past wrongdoing. The settlement is little more than a "go and sin no more" response.

The proposed remedies are inadequate and will not adversely impact Microsoft's monopoly. For example, judgment remedies are specific to companies in commerce; that is, companies that operate for a profit. Ironically, the biggest threat to Microsoft on the PC platform today is Linux. Linux is a non-commercial product. As such, Linux developers have no rights under the proposed settlement.

Section III(J)(2) is actually against not-for-profits. Specifically, Microsoft need not describe nor license API, documentation, or communications protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business: "... (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..." That Microsoft is able to set such criteria is remarkable...and remarkably bad.

Similarly, Section III(D) speaks to disclosure of the APIs for non-Microsoft middleware. The parties to which Microsoft agrees to disclose these APIs--APIs which are necessary to allow a program to interoperate with Windows--are explicitly commercial entities.

My suggestions:

1) APIs enabling non-Microsoft programs and operating systems to properly interact with the Windows operating system and middleware products should be made available to any and all parties that create such programs. Microsoft

should have no veto power in this.

2) Microsoft should release the specifications of its applications' file formats. Microsoft should not be able to constrain a consumer to using its products in order for that consumer to get to his own data. File specifications should be public. Microsoft would have to compete on the quality of its products (e.g., Word, Excel) rather than on the ability to hide the documents behind proprietary file formats.

3) Microsoft's tendency to "embrace and extend" should be forcefully curbed. Microsoft has, many times in the past, modified industry standards in order to make proprietary versions for its products that, due to Microsoft's monopoly power, end up locking out competition. They have done so in computer languages such as Java (see "Microsoft's holy war on Java" <http://news.com.com/2009-1001-215854.html?legacy=cnet>). They have done so with open security protocols such as Kerberos (see "Kerberos made to heel" <http://zdnet.com.com/2100-11-502019.html?legacy=zdn>). And they do so with internet protocols and HTML extensions.

As recently as October 2001, Microsoft's web portal, MSN.com, went so far as to disallow non-Microsoft browsers such as Opera, Mozilla, Amaya, Konqueror, and some version of Netscape from even viewing the site. Instead, visitors were greeted with a message that recommended that people "upgrade to Internet Explorer" (see "MSN.com shuts out non-Microsoft browsers" <http://news.com.com/2100-1023-274944.html?legacy=cnet>).

Microsoft seeks out promising or threatening technologies, incorporates them, and claims to make them better. But "better" ultimately means they only work on the Microsoft Windows platform. When we are dealing with standards that impact computer-to-computer communication and interaction--most notably, the internet, itself--Microsoft must not be allowed to redefine and own those standards.

4) Allow computer buyers to return Windows for a refund. Windows is included with nearly every desktop PC sold today, whether a user needs or wants it. It should be possible for a person to buy the computer but opt out of the operating system. Microsoft should institute a rebate mechanism so that a person who needs a new computer to run Linux or BSD or other operating system is not forced to pay a "Microsoft tax." And, in these days of low computer prices, the contribution of this tax to the total cost of the system is not insignificant. An alternative would be to say that manufacturers should offer PCs without operating systems; however, Microsoft is the party under the jurisdiction of the court.

5) Assess a cash penalty on Microsoft in correct proportion to the damages that resulted out of its illegal monopoly. Microsoft has benefited handsomely from its wrongdoing. The proposed settlement does not speak to this at all. The court should.

Thank you for my opportunity to comment.

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